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08/325,549	10/18/94	BARBERG	D B560.120002

EXAMINER
NGUYEN, J

B4M1/0207

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ART UNIT	PAPER NUMBER
2405	18

DATE MAILED: 02/07/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-17 are pending in the application.
   Of the above, claims 3-11 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1, 2, and 12-17 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

PTOL-326 (Rev. 9-89)

Claims 3-11 stand withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected species, as applicant has not indicated a different election. Election was made **without** traverse in Paper No. 7.

Claims 1, 2, and 12-17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A few examples are cited below; **all claims** should be revised carefully to correct other similar deficiencies.

For clarity and definiteness, it appears that --vertically-- should be inserted after "column" (claim 1, line 6), that --exterior of the-- should be inserted before "base" (claim 1, line 12).

The following are **not clear** in the context: "free from attachment" (claims 1 and 17)(what about the retainer?); "over" (claim 14); "freely retaining" (claim 17).

The following appear to **lack antecedent basis**: "the rim" (claims 12 and 13).

In claims 1 and 17, exactly where is the first access hole located?

In claim 1, what is the purpose of the mounting holes?

In claim 14, what is "overlapping" relative to? What is the structure of "releasable coupled"?

In claim 17, what is "concentrically" relative to?

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 2, and 12-17 are rejected under 35 U.S.C. § 103 as being unpatentable over Harrill in view of Chong.

Harrill discloses a container having a rotatably mounted spool 10 having substantially all the claimed features except that the spool is rotatably mounted to the container by a screw 54. Chong discloses a similar apparatus having a bucket 16 for supporting a spool comprising a bottom 26 and an integral column 30 resting on the base of the bucket. Note the "foot plate" 10 and the retainer 32. It would have been obvious to a

person having ordinary skill in the art to provide the spool of Harrill as being unattached to the container as taught by Chong to reduce the number of parts and costs and with a foot plate and mounting holes (note the mounting holes in element 64 of Harrill) so that the apparatus can be supported and mounted. That the holes are spaced equidistantly would have been an obvious matter of design choice to a person having ordinary skill in the art based on factors such as preference and space optimization.

Claims 1, 2, and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 19, 22, and 24 of copending application Serial No. 08/325,552. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the instant claims are encompassed in the above claims of the copending application.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

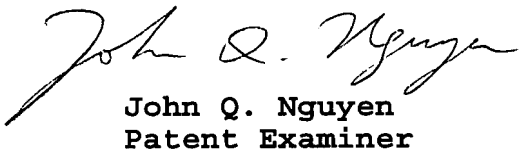
The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

It should be noted that the Terminal Disclaimer of the parent application does not carry over to the instant application.

Applicant's arguments with respect to claims 1 and 17 have been considered but are deemed to be moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Nguyen whose telephone number is (703) 308-2689. Facsimiles are received at (703) 305-3588 (or 3589).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0771.



John Q. Nguyen
Patent Examiner
Group 2400